

U.S.D.I. BUREAU OF LAND MANAGEMENT
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SUPPLEMENTAL TECHNICAL GUIDE
Acquisition and Stewardship
of
Conservation Easements
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ACQUISITION AND STEWARDSHIP OF CONSERVATION EASEMENTS
MANUAL / HANDBOOK H-2100-1 SUPPLEMENTAL TECHNICAL GUIDE
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Sample Documents and Illustrations

Articles

1. *Baseline Documentation and Monitoring - Keys to a Successful Future Defense* ([pdf Version](#))
2. *Reserved Interest Deeds: An Alternate Approach to Drafting Conservation Easement*, ([pdf Version](#))
3. *Tallying up the Costs of Easements* ([pdf Version](#))
4. *Preparing for Future Litigation of Conservation Easements* ([pdf Version](#))

Illustrations (Available in pdf, doc and/or xls)

1. Sample BLM Conservation Easement Baseline Documentation Report Format ([pdf Version](#) or [doc Version](#))
2. BLM Sample Baseline Report (Clark Farm) ([pdf Version](#))
3. BLM Sample Traditional Conservation Easement-1 ([pdf Version](#) or [doc Version](#))
4. BLM Sample Traditional Conservation Easement-2 ([pdf Version](#) or [doc Version](#))
5. BLM Sample Reserve Interest Conservation Easement (Wild & Scenic River) ([pdf Version](#) or [doc Version](#))
6. BLM Sample Reserve Interest Conservation Easement (Generic for National Conservation Area) ([pdf Version](#) or [doc Version](#))
7. Sample BLM Easement Amendment Policy ([pdf Version](#) or [doc Version](#))
8. Sample project Cost Estimation Worksheet ([pdf Version](#) or [xls Version](#))
9. Sample BLM Monitoring Checklist ([pdf Version](#) or [doc Version](#))
10. BLM CE File Outline for Monitoring ([pdf Version](#) or [doc Version](#))
11. BLM Easement Monitoring Report - Clark Farm ([pdf Version](#))
12. BLM Sample Easement Monitoring Report Format ([pdf Version](#) or [doc Version](#))
13. BLM Sample CE Monitoring Policies and Procedures and Monitoring Report Format ([pdf Version](#) or [doc Version](#))
14. Sample Conservation Partners Easement Monitoring Report Format ([pdf Version](#))
15. Sample BLM CE Monitoring Photography Affidavit ([pdf Version](#) or [doc Version](#))
16. Sample BLM CE Archive Binder ([pdf Version](#) or [doc Version](#))
17. BLM Sample Conservation Easement Violation Policy ([pdf Version](#) or [doc Version](#))
18. BLM Sample Conservation Easement Notice of Violation ([pdf Version](#) or [doc Version](#))
19. MOU between BLM and Teton Regional Land Trust for Monitoring ([pdf Version](#))

ACQUISITION AND STEWARDSHIP OF CONSERVATION EASEMENTS

I. Purpose and Objectives

A. Purpose. The purpose of this Manual Handbook Supplement, which contains the requirements for acquisition policy, acquisition management and stewardship of conservation easements and other less-than-fee-title acquisitions, is as follows:

1. Determination of the need for acquisition of less-than-fee-title interests in land, or acquisition of land or interests in land.
2. Policy and methods to acquire legally sufficient rights to meet resource management demands through exchange, purchase, and donation.
3. Procedures used in the acquisition process.

B. Objective. The objective of conservation easement acquisition is to provide for acquisition of partial non-possessory interests in land necessary to meet planned program objectives. The objective of this Manual is to provide uniform BLM-wide guidance for the acquisition, management and long-term stewardship of conservation easements as a tool for effective management of public lands and resources. At a minimum, a conservation easement acquisition would be processed like any other acquisition (conformance with the land use plan, title review, hazardous material clearance, NEPA analysis, appraisal, etc).

C. Overall guidance for acquisitions is contained in BLM Manual Handbook H-2100-1.

II. Authorities

A. Acts with General Application

1. The Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2743, as amended; 43 U.S.C. 1716) allows the Secretary of Interior to acquire and dispose of interests in land by purchase, sale and exchange. FLPMA provides authority for the acquisition of partial interests outside areas containing specific legislative authority. Partial interests can be acquired whenever necessary to carry out the authorized work of the Bureau of Land Management, provided provision is made in the applicable appropriations act or other law.

2. The Endangered Species Act of December 28, 1973 (87 Stat. 884, as amended; 16 U.S.C. 1534). Section 12 of the November 10, 1978, amendment (92 Stat. 3766) directs the Secretary of Interior to establish and implement a program to conserve fish, wildlife, and plants, including those listed as endangered or threatened species. In order to carry out this program, the Secretary has the authority to acquire lands, waters, or interests therein by purchase, donation, or otherwise. Funding is made pursuant to the Land and Water Conservation Fund.

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B. Acts with Specific Application

1. Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906, as amended; 16 U.S.C.1277). The act authorizes the Secretary of the Interior and the Secretary of Agriculture to acquire lands and interests in land within the authorized boundaries of any component of the National Wild and Scenic Rivers System. The majority of the amendments to the 1968 act have added new rivers to the system, proposed others for study, or revised ceilings for appropriations. Individual river designations may expand or restrict land acquisition authority.

2. National Trails System Act of October 2, 1968 (82 Stat. 919, as amended; 16 U.S.C. 1246) authorizes the heads of Federal agencies administering the established National Trails to acquire lands or interests in lands by donation, purchase, or exchange, where applicable, within the exterior boundaries of areas under their administration. Individual trail designations may have special acquisition authorities or restrictions.

C. Other Acts

1. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 (note), 4601, 4602, 4604, 4621-4633, 4635, 4636, 4638, 3651-4655). This act provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal or federally assisted acquisition programs. It also establishes uniform and equitable land acquisition policies for Federal and federally assisted programs including a requirement that Federal agencies pursue acquisition of the entire property when the residual interest remaining in the land has no economic value (Title III, Section 301(9)). Title II describes benefits under the relocation provisions; Title III outlines acquisition policies.

State Directors shall supplement this handbook, as needed, to define the authorities specific to that State, such as Wild and Scenic Rivers, National Conservation Areas, other units of the BLM's National Landscape Conservation System (NLCS), or other areas as defined by other specific acts.

D. State Law

The creation, management and enforcement of conservation easements are subject to state laws. The United States, as holder of the easement, is required to accommodate state law in cases such as this. It is important to have a thorough understanding of what restrictions or additional considerations may apply in the state in which the easement will be created and held.

III. Policy

A. Priority should be given to acquisition of all land interests (fee title); however, if the decision is to acquire a partial land interest, acquire all the rights needed to accomplish management objectives. Ensure that the purpose for acquiring a partial land

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interest is consistent with Congressional direction and objectives in the approved BLM Land Use Plan(s) or special management area plan(s).

B. Limit the acquisition of conservation easements to congressionally designated areas where the objective is to protect scenic or other values while maintaining private land interests within the area. However, areas outside of congressionally designated areas may be considered only if the approved BLM Land Use Plan and/or activity plans clearly identify the need for ownership of a partial land interest and the State Director has approved the acquisition.

C. In determining the rights to be acquired in a conservation easement acquisition, it is appropriate to assume that any property rights not acquired or restricted will be exercised at some future time. If the anticipated impacts from exercise of such rights could be incompatible with the conservation and management objectives for the area, then efforts should be made to acquire the rights. Conservation easement acquisitions should be preemptive of future adverse land uses; when in doubt, endeavor to acquire as many rights as necessary. These issues often arise in the context of mineral rights, and consideration should be given to the acquisition of mineral rights whenever possible.

D. Easements shall be written with clear and objective terms and conditions. Focus on major land use objectives (e.g. subdivision, further development, timber harvest, etc.), with less emphasis on issues that are hard to administer or of minimal consequence. Emphasis should be given to measurable standards (e.g. permitted building heights, and areas). Avoid subjective criteria, such as references to maintaining “scenic beauty” or avoiding “adverse impacts.”

E. Once a Letter of Intent, Option for Purchase or other suitable agreement or Contract has been executed by the parties, make available final approved appraisals and referenced supporting documents utilized for the acquisition of private lands, or interest in lands, to the involved landowner, or their agent. Appraisals, once approved by Appraisal Services Directorate and BLM, may also be made available to the public. Unless waived by the provider, requests involving the release of confidential business information contained in these documents must be processed in accordance with 43 CFR, part 2. See BLM Manual 1278.

F. The landowner, agent, etc., will be given an opportunity to provide available sale data and market information to the appraiser and accompany the appraiser during inspection of the property. Any valuation documents disclosed during negotiations with the landowner, agent, etc. will not be covered under the provision of FOIA (B5) and will be made available to the public.

G. Evaluate Land and Water Conservation Fund Act (LWCF), Title II of the Federal Land Transaction Facilitation Act (FLTFA), Southern Nevada Public Land Management Act (SNPLMA) and/or other acquisition proposals as required under approved review procedures for those programs.

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H. The preferred format for acquiring partial interests should be through the use of either a traditional conservation easement or reserved interest deed. Conveyances in forms other than those mentioned above are unacceptable.

IV. Responsibilities

See BLM Manual 1203 for Delegations of Authority.

The State Director has the authority to accept donations, and options for the purchase of partial land interests. Authority for accepting purchases of partial land interests can be delegated to the District Manager.

State Directors, District, Resource Area or Field Office Managers, within their delegated areas, are responsible for uniformly implementing and carrying out the guidance and instruction contained in this Manual Handbook Supplement, implementing and managing the acquisition, stewardship and enforcement of conservation easements and other partial interests in their respective management unit, programming and budgeting funds, issuing local instructions, maintaining program quality control, and training personnel to become proficient in evaluating, processing, and stewarding conservation easements and other partial interests.

V. Preliminary Evaluation of Conservation Easements

A. Land Use Planning.

Conservation easements should be accepted or purchased by BLM only when they contribute directly or indirectly to the conservation of (specific / public / unique) resource values of importance to the BLM, within special management areas such as those designated by Congress or through the BLM planning process. BLM must be able to document that the acquisition is within the BLM's mission and is consistent (in conformance) with the land use plan (RMP or MFP, as well as activity or project-level plans, if applicable) for the area as required by Sec. 205 of FLPMA. Fulfillment of another entity's (e.g., local government or non-profit organization) acquisition goals or augmentation of that entity's acquisition funding, will not be sufficient rationale for consideration of an acquisition. However, the fulfillment of those goals and consistency with that entity's plans could be a secondary benefit of the acquisition.

B. Purpose of the Easement

1. BLM must document the Federal purpose being fulfilled (i.e., protection of scenic values, plant or wildlife habitat, endangered species habitat, provision for recreation opportunities, etc.) and provide justification as to how acquisition of less than fee simple title is in the public interest and sufficient to fulfill the purpose and meet management goals. In some cases, legislation establishing a special management area may direct less-than fee title acquisitions, or documentation may come from the RMP/MFP, activity plan, and/or project level plan.

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2. The Federal purpose is integral to determining the necessary terms and conditions for the easement and will guide future monitoring and enforcement flexibility of management in resolving issues that may arise.

3. For conservation easements, review the statutory and legislative history to ensure the rights being acquired and the rights remaining with the landowner will meet the intent of the legislation and management objectives for the area. Many statutes authorizing conservation easements limit the amount of land the Federal Government can acquire in fee. Review the applicable statutes to ensure that the rights being acquired do not exceed the acquisition authorities for wild and scenic rivers and other special management areas. Timber harvesting is often automatically prohibited without consideration of the type of timber harvesting activity or mitigation actions. Under some circumstances it is appropriate to include discretionary language whereby the Secretary of Interior could prescribe terms and conditions for some harvesting, such as for salvage or domestic uses, consistent with management objectives for the area.

C. Guidelines for State Director / District Manager Approval

Obtain the State Director / District Manager's concurrence before negotiating the acquisition of partial land interests. Unless the proposal is in an area specifically designated for conservation easement acquisition (e.g. Rogue National Wild and Scenic River corridor, San Pedro Riparian National Conservation Area (portions thereof)), provide the following supporting information and an analysis of the acquisition to the State Director / District Manager as a basis for their concurrence:

1. Authority for acquiring the partial land interests.
2. Confirmation that the rights proposed for acquisition do not exceed any limitations specified in the acquisition authority for wild and scenic rivers and other special management areas.
3. Purpose of the proposed acquisition of a partial land interest.
4. Future land or easement acquisition needs within the area.
5. Threat to BLM and adjacent Federal, State or local public resources if the interest is not acquired.
6. Public and congressional support for the acquisition of a partial land interest.
7. Willingness of landowner(s) to sell a partial land interest.
8. Cost effectiveness, including a comparison to fee title acquisition.
9. Source of funds for acquisition of the partial land interest.

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10. Anticipated funding and staffing needs for future monitoring and management “stewardship.” The primary purpose of the acquisition will determine the most likely source(s) of funds for future monitoring and management. The BLM Authorized Officer must not commit to buy or accept ownership of property unless they can demonstrate the means to care for it and fulfill the obligations of ownership.

11. A draft of the easement, mineral deed, or other appropriate conveyance document, including a list of unusual or special terms or conditions.

12. Map of the project proposal showing relationship of the proposed acquisition of a partial land interest to adjacent BLM lands.

13. Documentation that the acquisition of a partial land interest would meet the intent of management guidelines for the area and would comply with the approved BLM land use plan(s) or other management plans.

14. Guidelines for administration, monitoring and enforcement of violations if a conservation easement is being acquired.

VI. Preparing Conservation Easements

The purpose of a conservation easement is to protect specific resources by acquiring rights to control or preclude certain land uses in an area. These conservation easements are predicated on the premise that it is not necessary to acquire fee title to a property to meet certain management objectives and other land uses.

Good sources for examples of how members of the ‘land trust community’ have approached conservation easement policies and procedures can be obtained through the Land Trust Alliance (LTA) including, *The Standards and Practices Guidebook*, *The Conservation Easement Stewardship Guide*, and *The Conservation Easement Handbook*. All publications are available from LTA. To order any of these resources, please see the “Publications” section on LTA’s website at <http://www.lta.org/>.

In rare cases, it may become necessary to acquire additional or all of the remaining land interests where the BLM previously acquired a conservation easement. Treat this situation as a new acquisition through a purchase, exchange, or donation.

A. Baseline Records

For all easements, BLM must document the condition of the property (baseline conditions) at the time of acquisition. This document is frequently referred to as a “Baseline Documentation Report” or “Environmental Documentation Report”. Baseline information is critical for administration of conservation easements. Baseline data can be located in the recorded deed and in an administrative file. Essential critical information on preexisting uses of the property should be contained in the deed as exhibits and recorded with the land records. For donated easements, under IRS regulations (Treasury Reg. §1.170A-14(g)(5)(i)), the documentation of the property’s condition must be

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completed and certified as correct prior to the time of conveyance of title. This timeframe should be followed for all easements.

In most cases, the more information that can be recorded, the better for later administration and enforcement. Recorded data is of public record and therefore provides admissible evidence in enforcement actions. More importantly, successor landowners are legally on notice of recorded information. To the extent practicable, recorded data should be corroborated and augmented by the administrative file.

An inventory should be completed early in the acquisition process as it could affect the negotiations on terms and conditions of the easement and is essential to future monitoring and management of the easement. Field reports, maps, photographs, and other documentation should be utilized as necessary. Changes in baseline conditions between the time of the inventory and closing must be documented. Unacceptable changes may cause rejection of the acquisition. A copy of the baseline condition report should be provided to the grantor. In some easement projects, a plat of the property is recorded with the deed to show the location, size and uses of buildings and other structures, as well as identifying open space, pasture and woodlands. The baseline records file should include the following:

1. Dated and notarized photographs showing important features of the property. A video (VHS, DVD, or other digital image) recording of the property can also be used to document the condition and use of the property. Use a map to document the location and perspective of photographs and video recordings.
2. Large-scale color aerial photographs taken shortly after acquisition of the conservation easement.
3. Narrative description of preexisting uses and the purposes of the conservation easement.
4. The conservation easement.
5. Tract plats that identify classes of use and improvements.
6. The appraisal review.

Following is a link to an article on the importance of Baseline Documentation and sample baseline documents and forms that may be useful:

- **Background Information and Sample Baseline Records**
 - [*Baseline Documentation and Monitoring - Keys to a Successful Future Defense*](#)
 - [Sample BLM Conservation Easement Baseline Documentation Report Format](#)
 - [BLM Sample Baseline Report \(Clark Farm\)](#) (provided by BLM Idaho Falls, Idaho)

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Refer to BLM Acquisition Handbook H-2100-1, Chapter V, Document Preparation, Illustration 12, for another sample Baseline Report.

B. Easement Drafting Guidelines

A fundamental guideline in drafting an easement to protect conservation values is to prevent adverse impacts, not necessarily uses. It may be less important whether timber is harvested for commercial or personal use, than the impact of the timber harvest. Therefore, easement language should try to focus on the impacts on conservation values that we seek to prohibit or encourage, and less on how those impacts are created.

Uses can also be very difficult to monitor, while impacts are much easier to determine. Since conservation easements are typically monitored on an annual basis or in some cases less frequently, the provisions of the easement should address impacts that can be identified on that same limited basis. For example, during an annual monitoring visit it may not be possible to determine if All Terrain Vehicle (ATV) use has occurred on the property, or if the purpose for the ATV use was appropriate. A provision that allows for ATV use by the landowner for property management purposes, but not by a third party for recreational use, would be virtually impossible to enforce on an annual monitoring basis. However, it would be considerably easier to evaluate the impacts of ATV use on sensitive vegetation and habitat, regardless of who the user was. In this situation it would be more appropriate to deal with the issue as a prohibition on new roads, trails, ways, lanes, etc. – prohibiting ATV use altogether, or in specific sensitive areas. This approach results in easement provisions that are enforceable through periodic monitoring, and relate directly to the protection of the conservation values of the property.

Conservation easements frequently include general principles for protecting identified conservation values and then identify the need for a supplemental management plan for more specific guidelines. However, use of a management plan to defer conflicts or decisions on difficult topics until later must be avoided.

1. Resource Management Considerations

a) Agriculture. Agriculture is somewhat unique as a conservation value. Qualified conservation values reflect resources present on the property – open space, scenic, natural, or historic. Agricultural lands certainly possess resources – rich soils, irrigation systems, high quality forage, etc. But agriculture as a conservation value differs from the others (along with timber management) because it is based upon an economic land use. As such, the maintenance of agricultural conservation values is dependent upon many evolving factors: changes in markets, changes in technology, changes in infrastructure, etc. For that reason, a conservation easement with agriculture as a conservation value must allow flexibility for the inevitable changes that will occur in the industry. At the same time, each property must be evaluated on a case-by-case basis to determine whether practices are beneficial or detrimental to the conservation values of the particular tract. Such practices as herbicide use, pesticide use, soil erosion, over grazing, etc should be addressed, both as they relate to the agricultural use and to the other conservation values of the property.

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It may be appropriate to prioritize the conservation values. For example, for a project on a ranching property with special status (e.g. endangered, threatened, sensitive, etc.) species, a management plan would be created for those portions of the property that contained the special status species' habitat. In those areas, the special status species was given higher priority than agriculture and specific management practices beneficial to the species were identified. In the remaining portion of the property, agriculture had a higher priority and the management plan practices did not apply.

The BLM should also contemplate what happens when the landowner may wish to change the traditional agricultural use (conversion from irrigated agricultural crops to aquaculture), or no longer wants to continue agricultural use of the property (conversion from livestock ranching to a guest ranch or outfitting business). A conservation easement that requires, rather than permits agricultural activities may have long-term problems. For example, it is unlikely that a court will compel the landowner to continue to practice specific agricultural activities. In addition, if agriculture is no longer economically viable on the property, the terms of the conservation easement may not allow for any other economic use. As a result, the landowner may be uncooperative or may abandon the property. On the other hand, a conservation easement that does not mandate agriculture should contemplate likely and acceptable future land uses (for example, encourage land uses that maintain a land cover of suitable vegetation that will prevent the property from being overtaken by noxious weeds).

For a source of further information on crafting easements to effectively protect working agricultural and ranch lands refer to the LTA publication *Working Ranchland Conservation Easements*.

b) Mining. Mining issues related to conservation easements are governed by the Internal Revenue Service (IRS) Code section 170(h) and case law. For all easements, the extraction of mineral resources through surface mining methods, or through any methods that are inconsistent with the conservation purpose, or irretrievably destructive of the conservation values, is prohibited (Small 1997, 15-1). If the landowner does not own all of the mineral rights, as is common in the West, a mineral potential report may be necessary to establish the mineral potential and likelihood of conflicts with the easement. A mineral report, prepared by a qualified geologist, must determine that "the probability of extraction or removal of minerals by surface mining is so remote as to be negligible" in order for the easement to meet IRS standards and to ensure that the conservation values will not be negatively impacted by the severed mineral interests (Diehl and Barrett 1988, 251; Small 1997, 15-1).

In cases of potential oil and gas development, look at what impacts the mineral development may have on the conservation values on a case-by-case basis. If it is determined that there is little or no negative impact to the conservation values, limited oil and gas development may be permitted. The development should be dealt with in the easement by acknowledging the impact and trying to limit it, such as by providing parameters for surface occupancy, extraction and restoration.

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IRS Regulations acknowledge that a deduction will not be denied for “certain methods of mining that may have limited, localized impact on the real property but that are not irretrievably destructive of significant conservation interests” (excerpt from 170(h) in Diehl and Barrett 1988, 251; Small 1997, 15-1). Of utmost importance is that the methods will not interfere with the overall conservation purposes of the easement.

Severed mineral estate, as defined in IRS Code §170(h)), includes reserved Federal mineral estates. For easement acquisitions involving “split-estate lands” (private surface/Federal minerals), merger of title of a conservation easement interest with the subsurface reserved Federal mineral estate, may not apply to the same degree as a fee title acquisition. Split-estate lands may be open to mineral location (see 43 CFR 3809.2 and 3809.31 and W.O. Instruction Memorandum 2003-202), mineral leasing, and mineral materials, and the extent to which the mineral laws apply to the lands must be addressed. A withdrawal, segregation, or land use plan decision may be necessary to remove the lands from the operation of the mining, mineral leasing, or mineral materials laws.

c) Recreation/Public Access. If outdoor recreation, including public access, and/or education by the public is a priority conservation value, the conservation easement must allow for public access to qualify for a charitable donation (Diehl and Barrett 1988, 243; Small 1997, 5-1). Potential adverse impacts of public access on other conservation values should also be addressed, and in some cases, it may be appropriate to prioritize conservation values in a manner similar to that previously discussed for agriculture. It may be necessary, for example, to identify areas of the property where recreation or public entry is prohibited or where it is a priority (e.g. – keep recreation out of sensitive areas such as wetlands or allow recreation along nature trails, greenways or river banks).

d) Timber Management. If a property has timber, the easement must address issues such as thinning, or fuel hazard reduction to prevent forest fires, habitat management, cutting of hazard trees to prevent property damage, and utilization of dead or diseased trees. If there are substantial timber activities on the property, a management plan prepared by a professional forester may be necessary. An example of language that addresses basic activities is:

Timber harvesting is prohibited except as set forth below. On a limited and localized basis, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for domestic uses on the Property such as firewood and construction of permitted buildings and fences. Tree thinning activities may take place to maintain the character and nature of the habitat. Timber harvesting other than the foregoing on the Property shall be conducted in substantial accordance with a forest management plan prepared at Grantor’s expense, approved by Grantee, by a professional forester.

For a source of further information on crafting easements to effectively protect diverse forest values refer to the LTA easement series publication *Working Forest Conservation Easements*, by Brenda Lind.

e) Water. Water is often critical to the conservation values of a property. Determining the importance of State permitted water to specific conservation

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values should be done at the time of the drafting of the conservation easement and the preparation of the Baseline Report. Identifying those permitted rights necessary to maintain sufficient water on the property should also be done at this time. The conservation easement should then specify these rights (often as an exhibit) and the provisions necessary to maintain them for the conservation values. In addition, the BLM should consider how to track the water use and, if the permitted water right is under threat of forfeiture or abandonment, how the land trust and the landowner will maintain the water right for the conservation values on the property. For example, in Colorado, it is possible to track water rights through use permits on-line at the Colorado Division of Water Resources (<http://water.state.co.us/>). Policies and practices regarding water rights in conservation easements is rapidly changing, reflecting the complexity both of water systems and water law. It may be necessary to consult with an attorney or other individuals experienced in State water law to determine how to monitor for and prevent abandonment.

For a source of further information on crafting easements to effectively protect water resource values refer to the LTA easement series publication *Protecting Surface Water Quality with Conservation Easements*, by Brenda Lind.

2. Existing Facilities and Reserved Development Rights

a) Existing Buildings. It is always important to determine the impact of existing or new development on the conservation values and draft the conservation easement accordingly. Existing buildings must be identified in both the text of the conservation easement and on the map exhibit of the property (The identification must be consistent in the Baseline Report as well). If there are provisions to enlarge, replace, repair, etc. buildings, BLM must monitor for these changes. To accomplish this, a proper photo and map record of the existing conditions, as well as identification of photo points for monitoring, should be established. See Part VII., A., for more details and sample format.

b) Reserved Development Rights “New Building Envelopes.” Many conservation easements identify building envelope(s) where development is permitted within certain restrictions. An envelope allows building within a specific area and prevents building from occurring randomly on the property. Minimizing the impact on the conservation values should help determine an appropriate location and size for the building envelope. As with existing buildings, it is important to document on a map exhibit where the envelope is located.

The conservation values should determine what aspects of the building should be restricted and what is permitted within the building envelope. For example, if a conservation value is scenic quality, the conservation easement should locate the building envelope to minimize the scenic impact (e.g. – avoid locating on a ridgeline or in a view corridor, encourage placing building envelopes in an area not easily seen by the public), as well as contemplate other restrictions such as height, color, mass, reflectivity, architectural style, etc.

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The inverse of these principles also applies. If the conservation values are not affected by the building or the building envelope, then it should not be unnecessarily restricted. If, for example, the conservation values of a property are agriculture and natural habitat, it is unlikely building height or color will have an impact on those values. Therefore, it would be inappropriate to restrict height and color in the easement. If there is a consensus that building height or color would adversely affect important scenic resources, then the easement should be re-drafted to include scenic qualities as a conservation value.

It may also be possible to identify the building envelopes in the future subject to the approval of the BLM authorized officer. In this case, it may be important to identify in advance, either areas where building envelopes are acceptable or areas where no buildings will be permitted, such as in sensitive habitat areas or wetlands.

The conservation easement should also clarify in the conservation easement document, common terms that may not be clear. For example, square footage (cumulative, enclosed, finished), building height (low point, high point, median height, profile – elevation line vs. height), natural building materials (natural appearing or natural materials) are all common terms with multiple definitions. In many cases, the conservation easement should also identify a maximum size of both individual buildings and the maximum cumulative size of all buildings. Careful consideration of these factors helps create a clear easement that may be easier to defend in the event of a violation.

How much development is too much? While the answer to this question depends on the particular property, the geographic region, and the conservation values of the property, it is clear that the underlying issue is one of conservation values – what level of development is sustainable without negatively impacting the conservation values.

c) Other improvements. Typically, conservation easements address other improvements such as roads, utilities, and fences. These provisions should be drafted based upon their impact on the conservation values. These existing and permitted improvements should also be identified in the conservation easement, on the map exhibit, and in the Baseline Report.

Summary

The topics covered here may not cover all of the scenarios encountered. These guidelines will help provide a starting point for drafting easements for individual properties. The starting point of the entire process is the premise that there are conservation values that deserve protection. Given that premise, development should be restricted, at a minimum, to the level necessary to protect those conservation values. Ultimately, building restrictions should not be arbitrary. They should be governed by the conservation values and what is practical to enforce.

C. Easement Formats

Conservation easements may be written in one of two formats: the “traditional or restrictive” format, as established in State Law under the Uniform Conservation

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Easement Act, drafted by the National Conference of Commissioners on Uniform State Laws, July – August, 1981, or the “reserved interest” format which was developed by attorneys in the Department of Agriculture (Forest Service), has been endorsed by Congress, and is the preferred format for conservation easements acquired by the U.S.D.A. Forest Service.

The LTA, several of its member land trusts and some BLM offices have found that landowners are not comfortable with the concept of “Reserved Interest” conservation easements and they will only consider conserving their property with “Traditional” conservation easements. The authorized officer must consider the benefits and risks associated with each easement format as well as the landowner’s preference for the conservation easement format selected.

BLM will support use of either easement format.

1. Traditional Conservation Easement

A traditional conservation easement lists the rights purchased by the United States and what activities the landowner agrees shall not occur on the property. In a dispute, the United States must prove what rights were acquired and the restrictions on the rights of the landowner. Any interests not described, or any ambiguities in the intent of the conservation easement, are likely to be settled in favor of the landowner. In the event of a dispute, the burden of proof often shifts to the United States to show that a particular use is not prohibited. The United States has been unsuccessful in protecting conservation values of a property when the conservation easement does not clearly identify the rights purchased by the United States or the restrictions on the landowner.

Following are recent examples of conservation easements written in a traditional easement format:

- **Sample “Traditional” Conservation Easements**

- [BLM Sample Traditional Conservation Easement-1](#)
(South Fork Snake River ACEC/SRMA, Idaho)
- [BLM Sample Traditional Conservation Easement-2](#)
(San Pedro Riparian NCA, Arizona)

2. Reserved Interest Conservation Easement

A reserved interest conservation easement delineates the rights reserved by the landowner. When the United States acquires a reserved interest conservation easement, the United States acquires all rights in the property not retained by the landowner. With a reserved interest easement, the United States is deemed to have acquired all rights in the property except those reserved by the landowner.

Reserved interest conservation easements may be the preferred format for use where in the event of a dispute; the burden of proof often shifts to the landowner to show that a

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particular use is reserved in the land. Another advantage to a reserved interest easement is that it reduces future ambiguities over land uses and activities that were not considered at the time the easement was originally acquired. Thus, when in doubt, a right is deemed acquired.

As noted previously, these types of easements have been congressionally endorsed and are used regularly by the Forest Service in its Forest Legacy Program, and by the Natural Resources Conservation Service (NRCS). For further information and commentary on Reserve Interest Conservation Easements you may wish to review the following article [*Reserved Interest Deeds: An Alternate Approach to Drafting Conservation Easements*](#) by James B. Snow, Deputy Assistant General Counsel for Realty & Dispersed Recreation, U.S. Department of Agriculture.

Following are links to sample conservation easements written in a reserved interest format:

- **Sample “Reserved Interest” Conservation Easements**
 - [BLM Sample Reserve Interest Conservation Easement \(Wild & Scenic River\)](#) (Sandy River, Oregon)
 - [BLM Sample Reserve Interest Conservation Easement \(Generic for National Conservation Area\)](#) (based on FS Reserve Interest Conservation Easement)

D. Easement Considerations

Start with a plan that analyzes the precise qualities of the area to be protected when preparing a traditional conservation easement or a reserved interest conservation easement. Rights reserved or conveyed by a landowner must be consistent with the conservation objectives of the area. Each conservation easement should be customized to meet the management objectives of a particular tract or area and to clearly define the rights and duties of the parties in the present and future to help avoid conflicts related to acquisition, valuation, management, and enforcement. The intent of the authorizing statute, relevant management objectives and other direction, and specific property conditions must be reflected in the conservation easement.

Conservation easements should include the following standard elements:

1. Preamble. Cite the authority(ies) for the acquisition. Specifically address the objectives and purposes of the acquisition. Link the objectives and purposes to the authority, the approved BLM Land Use Plan, or other special area management plan.

2. Description of Property. Cite the legal description of the property encumbered by the conservation easement. If different restrictions govern different portions of the property, define the boundaries of these areas.

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3. **Term.** The term of conservation easements should be perpetual. Consideration of a term easement should be rare and will require approval in advance by the State Director, in consultation with the Regional Solicitor. BLM must be able to document how the term easement fulfills the Federal purpose and why a perpetual easement is less desirable or not necessary (in other words, why it is in the public interest to acquire only a term easement). This justification should include a discussion on the permanent protection of the resource (how the resource will be protected after the term easement expires). For purchased easements, BLM must also document how expending funds for rights that are temporary in nature is fiscally responsible and in the public interest. Some funding authorities like the LWCF Act prohibit acquisition of less than perpetual interest in property. A landowner's unwillingness to grant a perpetual easement will not, of itself, be sufficient rationale to consider the purchase of a term easement. Time for negotiation and costs for acquisition of term easements will likely be comparable to acquisition of a perpetual easement, and it is likely the appraisal for a term easement will be more difficult than for a perpetual easement.

4. **Covenants and Restrictions on Use/Reserved Rights.** When using a restrictive conservation easement, describe the covenants and restrictions on future uses retained by the grantor. When using a reserved interest conservation easement, specify the rights to be reserved by the grantor. Defining these restrictions on use or reserved rights is one of the most important areas of conservation easement preparation. Carefully review the conservation easement document to ensure the covenants and restrictions or reserved rights are understood and plainly stated. Pay particular attention to provisions covering the construction and maintenance of structures, subdivisions, and alteration of the land surface and vegetation. Current uses, such as timber harvesting, row crop production, and grazing, should be considered when drafting the deed.

5. **Affirmative Obligations of Grantor.** Define obligations of the grantor, such as the payment of real property taxes, maintenance of the property, insurance against liability and loss, and compliance with zoning ordinances.

6. **Activities Requiring Permit from United States.** List those activities of the grantor that may be permitted at the absolute discretion of the authorized representative of the grantee. These activities may include horticultural practices, group events, filming and installation of overhead or buried utility lines.

7. **Affirmative Rights of Grantee.** This section of the conservation easement denotes the rights and obligations of the United States and provides the powers necessary to preserve the rights enumerated in the instrument and enabling legislation. Generally, this section provides a right of entry to the United States to administer the conservation easement to inspect for violations, and to provide for removal of items inconsistent with the purposes of the conservation easement. Cite the powers the United States needs to protect and maintain its interests from fires, insect and disease outbreaks, and erosion, and include the right of entry to the property to repair or restore damage to the interests of the United States.

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8. General Provisions. List terms and definitions used in the conservation easement. This section should include provisions associated with conservation easement administration, hazardous waste, public access, sale or transfer of the property, and amendment. Also include provisions specific to the purposes for the conservation easement, such as historic preservation, scenic protection, or archaeological exploration.

Management guidelines describing the terms and conditions of the conservation easement can limit ambiguities and help the landowner and administrator meet the objectives of the conservation easement. For example, if all buildings must retain historic architecture, a guide showing acceptable architectural modifications should be prepared and made part of the conservation easement. In other cases, paint colors or low-reflective materials may be described. Maintaining a local source list of acceptable architectural styles and materials can help the landowner comply with the conservation easement, and help prevent violations and litigation.

Instruments that provide the public with foot or motorized access along any portion of the property must define the extent and nature of the access. Conversely, if public access is not to be allowed, be sure to state that nothing in the conservation easement is to be interpreted as conferring such rights.

9. Amendment Provisions. Amending easements is a sensitive issue and must be entered into with careful analysis and consideration. Many offices do not develop written amendment policies, feeling that they do not want to encourage landowners to ask for changes to their easements. However an amendment policy can actually discourage landowners from seeking changes to an easement by explaining the strict criteria BLM will follow and the thorough procedures it will use in evaluating proposed amendments.

BLM District and Resource Area or Field Offices should carefully consider and develop a policy before amending any conservation easement. Refer to the following [Sample BLM Easement Amendment Policy](#).

Ensure that the Office of the Solicitor reviews all draft conservation easements and amendments, prior to appraisal and execution by the grantor, for legal sufficiency.

VII. Stewardship (Monitoring) & Enforcement of Conservation Easements

BLM must be able to determine and commit to the post-acquisition actions (stewardship program) and costs that will be necessary to monitor and if needed enforce the terms of the easement.

A. Stewardship

The word “stewardship” encompasses many discrete activities including: monitoring and enforcing conservation easements; actively managing lands to encourage and sustain ecological health and diversity; and engaging a community in activities that sustain the natural resources it values or on which it depends. Where BLM is an easement-holder it

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should be involved in all of these stewardship activities in order to maintain credible easement programs, ensure that the land is well taken care of, and gain or maintain strong community support. For some the challenge of simply doing the deal may seem hard enough; finding the time and resources for ongoing work with landowners and the community seems like a luxury. But, an understanding and commitment to comprehensive stewardship is crucial to sustaining the value of any property interests acquired by BLM.

The stewardship program and responsibilities should be formalized and clearly understood prior to conveyance of title. Cost and workload of managing an easement should be expected to be greater than for comparable Federal land because of the continued non-Federal uses of the property. For further information and commentary on developing a reasonable estimate of easement stewardship costs you may wish to review the following article from the Spring 2003, Land Trust Alliance publication “Exchange” titled [*Tallying up the Costs of Easements*](#) by Jeanne Wright, of the Minnesota Land Trust.

Property that the BLM holds for conservation purposes confers responsibility and is a permanent financial liability. It costs the BLM money up front to acquire and initiate management and it takes money every year to monitor, maintain, and manage the property. Even if a BLM District, Resource Area or Field Office depends heavily on partners or volunteers to help manage its property, there remain costs for administration and boundary management (survey, signs, etc.). The amount of money required to manage a property varies depending on its size, intensity of management, public use, and other factors. A commitment must be made to determine what management is needed and to fund the necessary management as long as BLM holds the property. Owning an interest in land without fulfilling our responsibility to manage and thoroughly prosecute the legal rights granted in the easement can damage the image and credibility of the agency.

District, Resource Area or Field Offices should anticipate and plan for three types of stewardship or management costs:

- One-time start-up costs,
- Annual costs, and
- Occasional replacement costs.

These management costs include capital expenses, staff and partner/consultant/volunteer time.

1. One-time start-up costs. When BLM acquires land or an easement interest in land, it needs to take some actions immediately. Possible start-up activities include the following:

- Contacting neighbors,

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- Surveying and posting boundaries and hazards,
- Garbage cleanup,
- Conducting natural and cultural resources inventories,
- Holding a dedication ceremony,
- Locating rare species,
- Fencing,
- Installing gates or cattle guards at trail heads or to block roads,
- Trail and parking area construction,
- Removal of buildings or known hazards,
- Erecting entrance signs,
- Preparing maps and aerial photographs,
- Preparing a management plan, and
- Preparing a project area brochure.

These start-up costs listed above are expenditures that are generally one-time costs.

2. Annual costs. Most stewardship costs are for annual, reoccurring expenses for monitoring and managing the property. Annual monitoring is recommended. Annual costs might include the following:

- Monitoring for compliance, trespass, overuse, hazards, etc.,
- Maintenance of facilities (trails, signs, parking areas),
- Resource maintenance or restoration,
- Records management, and
- Administration.

3. Replacement costs. Finally, BLM needs to consider replacement costs that occur on a periodic (but not annual) basis. These costs might include replacement, repair, or maintenance of the following:

- Brochures,

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- Trailhead or road barriers,
- Equipment purchase and maintenance,
- Signs and registration box,
- Boundary signs/brushing out boundaries,
- Trails, roads, bridges and walkways, and
- Buildings and other structures.

Replacement costs should be calculated and extrapolated to an annual cost.

The costs and workload should be determined both individually (for the specific acquisition) and cumulatively (for multiple easements in a project area for example), if applicable. Refer to the following [Sample project Cost Estimation Worksheet](#).

Stewardship Contracting. Recent changes in BLM contracting authority may provide expanded opportunities for financing stewardship activities on BLM owned and easement controlled lands. The FY 2003 Omnibus Appropriations Bill (P.L. 108-7), Section 323, amended Section 347 of the FY 1999 Appropriation Omnibus (P.L. 105-277, October 21, 1998) that originally granted the U.S. Forest Service pilot stewardship contracting authority. The amended language expands the contracting authority granting BLM the ability to enter into stewardship projects with private persons or public or private entities, by contract or agreement to perform services to achieve land management goals for the Forest Service and BLM that meet local and rural community needs. For further information on the BLM's stewardship contracting program please refer to the website at http://www.blm.gov/wo/st/en/prog/more/forests_and_woodland/0.3.html.

The authorized officer is responsible for administering the conservation easement in accordance with its terms. A well-written conservation easement that clearly defines the rights reserved by the grantor provides the basis for future administration and enforcement actions. Frequent monitoring for early detection of violations and contact with the landowner to discuss the terms is critical to the successful administration of conservation easements. Following are several sample documents and forms that may be useful:

- **Checklists and Outlines**
 - [Sample BLM Monitoring Checklist](#)
 - [BLM CE File Outline for Monitoring](#)
- **Sample Monitoring Report Forms**

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- [BLM Easement Monitoring Report - Clark Farm](#)
- [BLM Sample Easement Monitoring Report Format \(generic\)](#)
- [BLM Sample CE Monitoring Policies and Procedures and Monitoring Report Format](#) (based on TNC Monitoring Procedures)
- [Sample Conservation Partners Easement Monitoring Report Format](#) (provided by Teton Regional Land Trust)
- **Other Miscellaneous Sample forms**
 - [Sample BLM CE Monitoring Photography Affidavit](#)
 - [Sample BLM CE Archive Binder](#)

When notified of a change in ownership, contact the new owner and invite the new owner to tour their property and explain to them why the conservation easement was acquired, how it is administered, and how to work with BLM in the management of their property. Many conservation easement violations occur because the new owners are not aware of the conservation easement or its purpose.

The frequency and intensity of monitoring inspections is dependent on the interests acquired in the conservation easement and its location. Conservation easements adjacent to homes are likely to experience greater potential trespass activity, and boundaries should be checked more frequently. In other situations, monitoring should occur when necessary to ensure compliance with the conservation easement. All observations and photographs taken during monitoring should be documented and made part of the permanent record.

There must be a consistent and well-documented monitoring history for the property. Having a clear, consistent documented process for stewardship will aid in the defensibility of the conservation easements and reduce the need for enforcement actions. Thought should be given to archiving official easement file information for long-term protection.

B. Enforcement

Grant of a conservation easement conveys a real property “interest.” Acquisition of such an interest makes the acquired property interest “public land” as defined in Section 103 of FLPMA, and makes applicable to those lands the enforcement provisions authorized pursuant to FLPMA, including those contained in 43 U.S.C. §1733(c)(2) and Title 43 of the Code of Federal Regulations. Refer to BLM Manual Section 9230 for further guidance.

Without limiting our existing enforcement authority, BLM must be careful about the procedures it uses to investigate and enforce an easement violation because of the special ownership relationship that is created. If the BLM eventually has to go to court to

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address the violation, it will be critical that we consulted with legal counsel along the way and took appropriate steps to document and notify the landowner about the violation.

Make every effort to contact the landowner in writing when a term of a conservation easement is violated. Work with the landowner to identify corrective actions and the dates for the actions to be completed. Maintain a file documenting all correspondence and conversations, all corrective actions, and the dates the actions are completed. Contact the Office of the Solicitor if the violation is not corrected. For further information and commentary on preparing and maintaining records for potential future litigation of conservation easements you may wish to review the following article from the Winter 2005, Land Trust Alliance publication “Exchange” titled [*Preparing for Future Litigation of Conservation Easements*](#) by Elizabeth L. Wroblincka, Esq., an attorney who teaches conservation issues, and chairs the Massachusetts Easement Defense Subcommittee.

BLM District, Resource Area or Field Offices should formalize procedures regarding violations, while recognizing that every instance will need to be handled uniquely. Following are sample easement violation policy and notice documents that may be useful:

- [BLM Sample Conservation Easement Violation Policy.](#)
- [BLM Sample Conservation Easement Notice of Violation.](#)

VIII. Role of Third Parties

Third parties (National Conservation Organizations, local land trusts, volunteers, and others) play an important role in the BLM land and partial interest acquisition program, and are serving in an emerging role in stewardship of lands and interests in land which have been acquired by BLM.

A. Facilitated Purchase of Partial Interests

Conservation Organizations and local land trusts often serve as intermediaries in the acquisition process by optioning conservation easements for eventual sale or donation to the BLM. Prior to negotiations, ensure that third parties understand the partial land interests the BLM wants to acquire and what conservation easement format is acceptable. Conduct transactions that involve third parties according to the “Guidelines for Transactions Between Nonprofit Conservation Organizations and Federal Agencies” published in the Federal Register, volume 48, no. 155, Wednesday, August 10, 1983 (See 5409.13 Ch 10 11.4 ex**). Maintain open and frequent communications with third parties involved in conservation easements for acquisition by the BLM. Third parties do not serve as contractors for the BLM, and the BLM is not obligated to purchase land or conservation easements held by them. You are advised to enter into either a Letter of Intent and/or Agreement to Purchase Land or Interest (purchase option) to ensure that roles and responsibilities are clearly articulated and understood. Further information on the preparation and use of Letters of Intent and Agreements to Purchase Land or Interests

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can be found in Chapter IV. Part II. E., and Chapter V. Part III. C., of BLM Handbook H-2100-1.

B. Third Party Assistance with Stewardship and Monitoring of Acquired Partial Interests

BLM managers must look to actively engage landowners and cooperating partners and other parties in the long-term stewardship and monitoring of conservation easements. BLM should consider having landowners, resource consultants, researchers, members of the local land trust and community members on advisory committees to prioritize anticipated stewardship program needs and to build stronger landowner and community relationships. Following are several options BLM managers should consider to strengthen easement stewardship and to share or minimize the burden and cost of easement stewardship.

1. **Enlist Landowners in Stewardship Activities.** It is the active and adaptable management exercised by landowners in response to changing conditions that has and will continue to sustain conservation values and functions on easement-held properties. BLM managers must recognize that engaging landowners is the most cost effective key to both good land stewardship and reduced risk of easement violations. Practice some form of landowner outreach, usually through the use of informational or educational activities to help landowners sustain conservation values in managing their lands. Information can be provided on topics such as weed or non-native invasive species management, forestry practices, restoration techniques, wildlife enhancements, and appropriate land management for living in a particular place (i.e., water law, fencing, nuisances, etc.). Outreach is accomplished through a variety of media including newsletters, publications, Web sites, field trips, tours and special events.

2. **Cooperative Management.** This category includes inventory, monitoring, planning and land management activities undertaken and funded solely by BLM or jointly by BLM, cooperating partners and/or landowners in order to meet common stewardship or land restoration goals. This can include projects undertaken on BLM-owned and/or adjacent easement-controlled lands to develop easement baseline records, monitor compliance with easement terms and conditions, demonstrate best management practices or experiment with new land management or restoration approaches. Responsibility and risk for implementation of resource stewardship activities may be shared between cooperating partners, landowners and BLM, when the BLM is an active, contributing partner in the design and implementation of stewardship activities. With cooperative management, BLM has a greater involvement in “active” stewardship activities and outcomes that are specifically designed to enhance conservation values and functions. Projects to gather specific inventory data or perform certain monitoring functions, or for fencing riparian areas for grazing management, reseeding or reforesting lands with native species, and running trials of various restoration techniques are just a few possible activities under cooperative management.

In a recent acquisition case, Idaho Falls BLM acquired a conservation easement with the assistance of a local land trust partner. The conservation partner was able to enter into an

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option agreement with the landowner and secure a charitable donation of a portion of the value of the easement. The land trust agreed in advance to pass the significant discount (savings) on to BLM which allowed BLM to finance a “permanent stewardship endowment” to be managed by the land trust as part of the final consideration for the easement. That endowment along with an agreement (MOU) between the land trust and the BLM ensures that reliable funding will be available for long-term stewardship and monitoring of the easement by BLM with assistance from the land trust. Refer to the sample Memoranda of Understanding [MOU between BLM and Teton Regional Land Trust for Monitoring.](#)

An agreement in a form suitable for the anticipated function will generally be necessary. Refer to BLM Washington Office Information Bulletin No. 98-100, dated March 17, 1998 for a [“Guide to Agreements.”](#)

3. Research Projects. Look for opportunities to sponsor or conduct research in land management techniques or innovations with the objective of evaluating the effectiveness of new approaches for practical application on easement-held privately managed properties. Research activities, often in partnership with educational institutions, increase the influence and credibility of the BLM in dealing with landowners on stewardship activities, and help to improve the overall quality of resource management in the area. Typically these programs are related to working forestry or agricultural/ranching landscapes where land stewardship is evolving and a combination of knowledge gained by longtime land managers and science come together to experiment with emerging approaches and applications. Maintaining continuous forest inventory plots on various properties, conducting long-term water quality surveys, experimenting with fire applications, and applying various rotational grazing practices to improve rangeland health fall under this category.

IX. Negotiation and Purchase Procedures

Refer to BLM Acquisition Handbook H-2100-1.

A. Estate to Be Acquired

The rights needed to meet management objectives must be defined prior to starting an appraisal or beginning negotiations with the landowner. Identifying the rights to be acquired is essential for the appraiser to estimate value and for the negotiator to determine the willingness of the landowner to sell those interests.

1. For conservation easements, review the statute and legislative history to ensure the rights being acquired and the rights remaining with the landowner will meet the intent of the legislation and management objectives for the area. As an example, timber harvesting is often automatically prohibited without consideration of the type of timber harvesting activity or mitigation actions. Under some circumstances it is appropriate to include discretionary language whereby the Secretary of Interior could prescribe terms and conditions for some harvesting, such as for salvage or domestic uses.

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2. If there are multiple owners of the property, BLM must ensure all owners are willing sellers. For corporations, partnerships, trusts, or other legal entities, BLM must ensure the party with whom we are dealing has the authority to act on behalf of the entity.

3. For corporations, partnerships, trusts, or other legal entities, the articles of incorporation may limit the ability of the entity to convey an easement, or may limit the ability to convey the easement at less than fair market value. BLM should determine early in the process whether any such limitations exist.

B. Appraisals and Value Considerations

As with other acquisitions, coordination with the DOI Office of Appraisal Services Directorate staff should occur early in the process to develop preliminary estimates of value. The conveyance document, usually a conservation easement, must be drafted prior to initiating an appraisal. Provide this draft document to the appraiser when the appraisal is requested. Complete the appraisal in accordance with established Department and Agency procedures. A new appraisal may be necessary if the rights being acquired change.

Legislation or policy may limit negotiation of purchase price. For example, Section 206(c)(4)(c) of the Federal Land Transaction Facilitation Act of 2000 states that acquisition of any land shall be “at a price not to exceed fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions”.

If the appraised value of a conservation easement is a significant portion of the value of the property, the Authorized Officer should reevaluate the feasibility of fee title acquisition.

C. Funding

The same requirements, procedures, and guidelines apply when acquiring partial land interests, as are used for fee title purchases. Oversight procedures established for land purchase also apply to partial land interest acquisitions.

Once land interests are acquired, funds to administer the conservation easement – should be linked to the purpose of the acquisition (e.g. benefiting program(s)) and requested through normal budgeting procedures. The expense of administering conservation easements can be significant; however, forgoing necessary administration may result in costly future litigation and/or loss of valuable property interests.

D. Options

The preferred method for case administration is using a land purchase option. Always use land purchase options and contracts when requiring a physical change in existing conditions, such as removal of buildings. See BLM Handbook H-2100-1, Chapter V. Part III., C., 1., and Illustration 18.

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E. Limitations in Acquisition of Partial Land Interests

Many statutes authorizing conservation easements limit the amount of land the Federal Government can acquire in fee. Review the applicable statutes to ensure that the rights being acquired are consistent with the acquisition authorities for wild and scenic rivers and other special management areas.

F. Title Considerations

The condition of title is as important when acquiring partial land interests as it is for fee title acquisition. See BLM Handbook H-2100-1, Chapter VII, for general procedures for obtaining adequate title evidence.

1. **Mortgages, Deeds of Trust and/or Vendors' liens.** Titles to conservation easements cannot be approved if they are subject to outstanding mortgages, deeds of trust, and/or vendor's liens. In all such cases, mortgages against the property on which the partial interest is being acquired must be released or subordinated to the conservation easement before payment of the purchase price can occur. The United States can pay the escrow fees that title companies charge to process closings involving the simultaneous release of a mortgage. Consult with the Office of the Solicitor in the event mortgages or other liens cannot be released or subordinated.

2. **Other Encumbrances.** As with any acquisition, BLM must be able to document that title encumbrances on the easement-burdened property will not interfere with the conservation goals of the easement. Legal agreements (including subordination agreements) with holders of third party interests may be necessary to ensure these rights will not conflict with the purpose of the easement. In some cases compensation may be necessary. In addition to legal encumbrances, BLM must also address physical encumbrances (structures and other improvements) and limitations that may be necessary (use, appearance, maintenance, etc.) so future actions are not in conflict with the purpose of the easement.

G. Condemnation

The Secretary of Interior has limited authority to condemn land, including partial land interests. Some of the authorities such as the Wild and Scenic Rivers Act limit condemnation of scenic easements by allowing the continuation of regular, existing uses. Other authorities designating special management areas prohibit condemnation. Always review the statutory authority and consult with the Solicitor when considering condemnation. If condemnation is necessary, the fee estate should be condemned unless prohibited by the authorizing legislation. The Government cannot use condemnation as a way to require a landowner to take an action or provide a service. Refer to chapter X of the BLM Acquisition Handbook for condemnation procedures.

H. Solicitor Involvement

Solicitor involvement is likely because of the potential complexity of the terms and conditions of the easement and to ensure the terms and conditions fulfill the documented

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purpose. This involvement will also be required early in the acquisition process during the development and preliminary approval of the pro forma easement.

I. NEPA Analysis

J. Nominations for Acquisition under the Federal Land Transaction Facilitation Act (FLTFA), Southern Nevada Public Land Management Act (SNPLMA) and the Lincoln County Land Act (LCLA)

1. For nomination purposes, the purpose of the easement, the primary rights to be acquired by the United States, the uses the landowner wishes to continue, the restrictions on the landowner, and geographic boundaries of the proposed easement should be clearly described. However, we should not be limited by this initial description of the easement if it is determined during processing that additional restrictions are necessary to fulfill the purpose of the easement. The landowner's "willing seller" statement should include an acknowledgment that additional provisions may be necessary for the easement to be acceptable for acquisition.

2. Because of the need to establish the baseline conditions and the expected long-term costs and workload of the stewardship program, these costs should be addressed in the Acquiring Agency's Authorized Officer Certification for conservation easements.

3. For nomination purposes, there may not be sufficient sales data for comparable conservation easements to estimate the FMV of the easement. Contact with other agencies indicates that the FMV of a conservation easement could be up to 80-90% of the FMV of the property depending on the rights to be acquired. Under the current FLTFA and SNPLMA implementation agreement(s), costs for acquisition can be less than the approved amount, but cannot exceed the approved amount by more than 10% without having to be re-programmed. Unless it is determined there is sufficient sales data to adequately estimate the FMV of the easement, an estimate of 80% of the FMV of the property should be utilized. This factor may over-estimate the value for some easements, but would likely prevent the need for substantial reprogramming.

K. Tax Considerations

Tax relief may be a factor in the willingness of a landowner to consider granting an easement. BLM employees should not give legal or financial advice to landowners, and landowners should always be advised to consult with their attorney or tax advisor to determine potential effects on taxes.

1. Income taxes. A grantor may qualify for an income tax deduction if an easement is either fully or partially donated. To qualify, the easement must meet three general criteria under IRS Code §170(h): 1) it must be perpetual, 2) it must be given to a qualified organization such as a land trust or public agency, and 3) it must be given "exclusively for conservation purposes" as defined in §170(h)(4)(A). Because term easements do not provide permanent protection, they would not qualify for tax relief.

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The donation of a term easement may actually have negative tax consequences as it could be considered a taxable gift.

2. Estate taxes. A grantor may qualify for an estate tax deduction for an easement. To qualify, the easement must meet the same criteria under IRS Code §170(h) described above and must prohibit more than de minimis commercial recreational activities. Again, term easements would not qualify.

3. Property taxes. Easements (either perpetual or term) may or may not affect property taxes. One reason is the easement may not materially affect the uses under which the property is assessed. Second, State law may require filing of an application and approval process for proposals for deferred taxation for agricultural and open space purposes. For a term easement, the property may be subject to repayment of any deferred property taxes if the property were converted to a higher use after the term easement terminated.

4. Under IRS Code §170(h), third party property interests, especially mortgages or severed mineral estate, could prevent the easement from qualifying for income or estate tax relief for the grantor. However, because subordination of a mortgage would be a requirement for title acceptance by the Regional Solicitor, mortgages should not be an issue for tax relief for Federal acquisitions

X. Exchange of Partial Land Interests

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) provides authority to permit the exchange of partial land interests. Refer to BLM Manual Handbook H-2200-1, for further direction concerning the exchange of land and partial land interests.